No. 91-342

IN THE
Supreme Court of the United States
OCTOBER TERM, 1991

MAHINDER S. UBEROI,
Petitioner,

v.

BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO,
Respondent.

On Petition for Writ of Certiorari to the Colorado Court of Appeals

MOTION AND BRIEF OF *AMICUS CURIAE* PUBLIC CITIZEN IN SUPPORT OF PETITIONER

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Public Citizen

October 30, 1991

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MOTION OF PUBLIC CITIZEN FOR LEAVE TO FILE BRIEF *AMICUS CURIAE* IN SUPPORT OF PETITIONER

Movant Public Citizen hereby seeks leave to file a brief *amicus curiae* in support of petitioner. The Petition seeks review of a decision of the Colorado Court of Appeals that affirmed an injunction barring petitioner from filing *any* "paperwork of any nature" on a *pro se* basis in the Twentieth Judicial District of Colorado.*

Public Citizen is a nationwide consumer advocacy organization with over 100,000 members. Of particular interest to our

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* A copy of petitioner's written consent has been lodged with the Clerk. The attorney for the respondent, Beverly Fulton, has informed the undersigned counsel of record that she does not consent to the filing of a brief *amicus curiae*.

membership have been the issues of open government and access to the courts, both of which concern the ability of the citizenry to participate in the political process and to petition the Government for redress of their grievances. Thus, we have supported the right of individuals to represent themselves in court and before administrative agencies and to be assisted by paralegals and other lay advocates in certain circumstances. Further, Public Citizen's Litigation Group is a co-author of *Representing Yourself -- What You Can Do Without A Lawyer* (Farrar-Straus-Giroux, 4th Printing 1987), which offers advice on how to represent oneself in a variety of personal and business matters, from buying and selling a home, to incorporating a small business, to in-court representation in certain circumstances.

We are therefore extremely concerned about the virtually unlimited scope of the injunction issued by the District Court of Boulder County, Colorado (Pet. A1-A3), and affirmed by the Colorado Court of Appeals (Pet. A3-A17), which forever bars petitioner from participating *pro se* in any state court litigation in the county in which he resides, not only involving respondent University of Colorado, but any other person whatsoever. Although the injunction expressly excludes post-judgment collection proceedings or appeals (presumably of the injunction itself), its breadth is extraordinary. For example, petitioner may not, on a *pro se* basis, initiate, *or even defend*, any court action in the Twentieth Judicial District of Colorado, nor may he even seek leave to file an action or pleading in any proceeding. We believe that this Court will benefit from an *amicus* brief at the *certiorari* stage because the petitioner is proceeding *pro se* before this Court and is not himself an attorney. We also believe that our perspective will sharpen the issues set out in the Petition and provide a more focussed perspective on the difficult problems inherent in the overbroad and fundamentally unfair injunction issued by the District Court of Boulder County. We ask therefore that Public Citizen be granted leave to file the accompanying brief *amicus curiae* in support of petitioner.

Respectfully submitted,

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QUESTION PRESENTED

Amicus Public Citizen believes that certiorari should be granted on the following question, which is adequately encompassed by the Petition's first, second, fifth, and twelfth question presented:

May a state court enjoin a *pro se* litigant from any participation in further litigation in any court in that judicial district, unless he hires an attorney to represent him, even as a defendant and even in the small claims court (where litigants must proceed *pro se*), on the ground that his prior litigation was frivolous and vexatious?

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BRIEF OF *AMICUS CURIAE* PUBLIC CITIZEN IN SUPPORT OF PETITIONER

INTEREST OF AMICUS

The interest of *amicus* Public Citizen is set out in the accompanying motion for leave to file this brief.

STATEMENT OF THE CASE

On August 17, 1988, respondent University of Colorado filed a complaint in the District Court of Boulder County, Colorado, requesting that petitioner be preliminarily and permanently enjoined from further representing himself as a plaintiff in any proceeding in the Twentieth Judicial District of Colorado (which includes the City of Boulder). A hearing was held before the district court on December 16, 1988, at which respondent relied

entirely on pleadings and orders in eight lawsuits prosecuted over a six-year period by petitioner, six in the Colorado state court system and two in the federal courts.

Only four of petitioner's lawsuits were brought against respondent. One of his suits attempted to subject respondent to the Colorado Open Records Act, *Uberoi v. University of Colorado*, 686 P.2d 785 (Colo. 1984), and another sought to hold the University liable for violations of the False Claims Act involving allegedly unlawful charges for indirect costs in contracts with the United States Government. *Uberoi v. University of Colorado*, No. 82-LW-806 (U.S. Dist. Ct., D. Colo.). Petitioner also sued respondent and its employees for violations of his civil rights concerning an alleged assault that occurred when petitioner attempted to obtain records from respondent's files that he claimed were being unlawfully withheld. *Uberoi v. University of Colorado*, No. 83CV625-5 (Boulder Dist. Ct., Colo.). Almost all of the claims against respondent ultimately were resolved favorably to the University, and in some, but not all, cases petitioner was ordered to pay respondent's attorney's fees and costs on the ground that petitioner's claims were frivolous or that his litigation conduct was vexatious.[1]

Three suits have concerned property disputes, two involving an automobile accident, *Uberoi v. Kirby and State Farm Ins. Co.*, No. 83-S-876-8 (Boulder Cty. Ct., Colo.) and *Uberoi v. Ellefson, Kirby and State Farm Ins. Co.*, No. 85CV1686-5 (Boulder Dist. Ct., Colo.), and the other involving an encroachment upon petitioner's property in which a neighbor and the City of Boulder were defendants. *Uberoi v. Malakh, et al.*, No. 84CV1907-5 (Boulder Dist. Ct., Colo.). The former resulted in a jury verdict in petitioner's favor, which, however, was more than offset by attorney's fees awarded to certain defendants. The latter case settled for

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[1] Petitioner also filed another case principally under the Open Records Act, in which he obtained some documents and was denied others. *Uberoi v. University of Colorado*, No. 85CV2080-2 (Boulder Dist. Ct., Colo.). In *Uberoi v. Richtel*, No. 87-Z-961 (U.S. Dist. Ct., D. Colo.), petitioner sued a state court judge for his conduct in that Open Records Act case. *Richtel* was eventually dismissed as moot, with each party bearing his own costs.

$500 from each defendant, without an award of attorney's fees or sanctions against any party.

At the conclusion of the hearing in this case, the district court ruled from the bench that respondent was entitled to an injunction prohibiting petitioner from appearing or filing *any* papers in the Twentieth Judicial District without being represented by an attorney. Transcript of December 16, 1988 Hearing ("Tr.") at 79-80. That ruling was later reduced to a written order "prohibiting [petitioner] from filing paperwork of any nature in any current or future pending case in the Twentieth Judicial District except matters relating to appeal or post-judgment proceedings unless he has an attorney who enters his or her appearance in any such case" (Pet. A1-A2). The court further stated that "[t]he stay is effective January 16, 1989" (Pet. A2). On January 23, 1989, the court issued an amended injunction, which reads in its entirety:

> It having come to the Court's attention by its re-reading the written injunction dated December 27, 1988, that some ambiguity may be present in said order, the Court now amends it to make clear that [petitioner] Mahinder Uberoi is enjoined from representing himself in any manner in the Twentieth Judicial District beginning January 16, 1989, except in post-judgment collection proceedings or appeals (Pet. A2-A3).

The Colorado Court of Appeals affirmed (Pet. A3-A17). The court first considered petitioner's claim that the injunction violated his constitutional right of access to the courts. Relying primarily on the Colorado Supreme Court's decision in *Bd. of County Comm'rs v. Winslow*, 706 P.2d 792 (Colo. 1985), *cert. denied*, 475 U.S. 1018 (1986); *see also, e.g., People v. Dunlap*, 623 P.2d 408 (Colo. 1981); *People v. Spencer*, 524 P.2d 1084 (Colo. 1974), the court of appeals rejected this argument in one paragraph, holding that petitioner's right of access to the court is not infringed "'because he still may ... employ[] an attorney authorized to practice in the State of Colorado'" (Pet. A7, *quoting*

Winslow, 706 P.2d at 794-95).[2]

The court of appeals further held that the lower court had not abused its discretion in issuing its injunction (Pet. A8). The court reviewed prior decisions of the Colorado Supreme Court that sought to balance a litigant's right of access to the courts against the public's interest against repetitious, baseless litigation (Pet. A9). The court of appeals then briefly reviewed the trial court record and held that, because the "findings have support in the record, they will not be disturbed on review" (Pet. A12). Petitioner's petition for rehearing to the court of appeals and petition for writ of certiorari to the Colorado Supreme Court were summarily denied (Pet. A18, A19).[3]

REASONS FOR GRANTING THE WRIT

The decision of the Colorado Court of Appeals does not address the important federal constitutional issues raised in the Petition. Although this Court has repeatedly made clear that the constitutional right of access to the courts is of fundamental importance, *see, e.g.*, *Bounds v. Smith*, 430 U.S. 817 (1977), it has never directly addressed the right to self-representation of a civil litigant in the state courts. Moreover, the lower courts are without firm guidance as to the restrictions that may be imposed on the constitutional right of access to the courts to prevent litigation abuse by a *pro se* litigant. As we now show, this case provides a particularly good vehicle for providing such guidance because the decision below departs from the mainstream approaches to litigation abuse followed by the lower federal courts.

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[2] The court of appeals did not mention that part of the lower court's injunction that bars petitioner from appearing *pro se* as a defendant, even though that aspect of the order was expressly raised by petitioner. *See, e.g.*, Opening Brief of Defendant-Appellant, at 2, *Bd. of Regents of the University of Colorado v. Uberoi*, Court of Appeals, State of Colorado, No. 89 CA 0124.

[3] The court of appeals also rejected petitioner's claim that his right to due process was violated because he did not have sufficient notice of the injunction hearing (Pet. A13-A15), and it also rejected other state law defenses (Pet. A16-A17). We do not support review on any of these grounds.

A. THE DECISION BELOW IGNORES APPLICABLE LEGAL PRINCIPLES.

The right of access to the courts has been described variously as emanating from the First Amendment's right to petition the government for redress of grievances, *see, e.g., California Motor Transport Co. v. Trucking Unlimited*, 404 U.S. 508, 513 (1972), as a privilege of national citizenship under the Fourteenth Amendment's Privileges and Immunities Clause, *see, e.g., The Slaughter-House Cases*, 83 U.S. (16 Wall.) 36, 79 (1873), and as inherent in our constitutional scheme because it "is the right conservative of all other rights." *Chambers v. Baltimore & Ohio RR*, 207 U.S. 142, 148 (1907); *accord Bounds*, 430 U.S. at 827 (*citing Johnson v. Avery*, 393 U.S. 483, 485 (1969)); *see also United States v. Kras*, 409 U.S. 434, 462 (1973)(Marshall, J., dissenting). This Court has held that barriers to court access may also be analyzed under the Fourteenth Amendment's Due Process Clause. *See Boddie v. Connecticut*, 401 U.S. 371 (1971); *Douglas v. California*, 372 U.S. 353, 356 (1963); *id.* at 363 (Harlan, J., dissenting).

Many of the modern cases enunciating the right of access to the courts in civil proceedings have involved *pro se* litigants. *See, e.g., Bounds, supra*. This Court itself has stressed that self-representation is a valued and fundamental right. *See, e.g., In re McDonald*, 489 U.S. 180, 184 (1989)(per curiam); *Price v. Johnston*, 334 U.S. 266, 280 (1948)(assuming that litigant seeking writ of habeas corpus may reject appointed counsel and represent himself). However, because the right to self-representation in all federal court proceedings has been guaranteed by statute since 1789, 28 U.S.C. § 1654, and is often secured in the states by constitution or statute, *see, e.g.*, Colo. Const., Art. II, §§ 6, 16; *cf. Faretta v. California*, 422 U.S. 806, 813 n. 10 (1975), the question whether there exists a federal constitutional right to *pro se* representation in civil proceedings has received little attention.[4]

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[4] Only one federal court has squarely addressed the issue, holding that there is no such right, but doing so without any analysis. *See Eitel v. Holland*, 787 F.2d 995, 998 (5th Cir. 1986). *See also Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 137 (1st Cir. 1985)(dicta), *cert. denied*, 476 U.S. 1172 (1986). *Cf. O'Reilly v. New York Times*, 692 F.2d 863, 867 (2d Cir. 1982).

In our view, the right to self-representation in civil cases is guaranteed by the constitution. In *Faretta*, *supra*, this Court held that a criminal defendant has a right to self-representation guaranteed by the Sixth and Fourteenth Amendments. *Faretta*'s rationale was not that usually associated with other rights emanating from the Sixth Amendment, *i.e.*, the need for heightened procedural safeguards attending criminal, as opposed to civil, proceedings, because of the potential for loss of liberty. Indeed, *Faretta* noted that a defendant's rights to a fair criminal trial would often be better protected with the assistance of counsel. 422 U.S. at 832-33.

Rather, *Faretta* was premised on a fundamental conviction, having its roots in England, and carried over to the colonies, that lawyers were to be distrusted and that ordinary citizens had the ability and common sense to look after their own interests. *Id.* at 826. In short, "[t]he Founders believed that self-representation was a basic right of a free people." *Id.* at 830 n.39; *see also O'Reilly v. New York Times Co.*, 692 F.2d 863, 867 n.5 (2d Cir. 1982)(Friendly, J.). Thus, the rationale of *Faretta* -- that the right of self-representation is longstanding, fundamental and inherent in the American ideal of self-determination -- is not limited to criminal proceedings, and strongly suggests that the Due Process Clause protects one's right to appear *pro se* in civil cases. *See Pac. Mut. Life Ins. Co. v. Haslip*, 111 S. Ct. 1032, 1051 (1991) (Scalia, J., concurring); *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934)(due process protects practices "so rooted in the traditions and conscience of our people as to be ranked as fundamental"). *Cf. Faretta*, 422 U.S. at 819 n. 15.

The existence of a constitutional right to self-representation in civil cases is relevant here because it severely undermines the rationale of the Colorado court's injunction. At the injunction hearing, the court stated that an absolute ban on self-representation was reasonable because petitioner was not indigent and, therefore, could hire an attorney to represent him on meritorious claims (Tr. at 78). In our view, however, because the right to proceed *pro se* in civil cases is guaranteed by Fourteenth Amendment, a curtailment of that right cannot be justified by saying that petitioner is free to hire an attorney. *Cf. Faretta*, 422 U.S. at 833

("it is one thing to hold that every defendant, rich or poor, has the right to the assistance of counsel, and quite another to say that a State may compel a defendant to accept a lawyer he does not want"). As one court has put it, "[a] necessary part of the right of self-representation is that a litigant, especially a plaintiff in a civil case, cannot be coerced into accepting appointed counsel rather than proceeding *pro se*." *Andrews v. Bechtel Power Corp.*, 780 F.2d 124, 137 (1st Cir. 1985).

This is not to say that, absent a due process right to self-representation, a prohibition against proceeding *pro se* in any way in a civil action would be constitutional. Apart from the Due Process Clause, the constitutional right of access to the courts under the First Amendment is sufficiently fundamental that the Colorado courts should have narrowed their injunction in a way that accorded that right greater respect. The injunction is, in effect, a broad prior restraint on petitioner's exercise of his First Amendment right to petition the government for redress of grievances, which runs against the grain of constitutional precedent. *Cf. generally United Transp. Union v. Michigan*, 401 U.S. 576 (1971); *NAACP v. Button*, 371 U.S. 415 (1963). Even those cases that limit the court access of *pro se* litigants have not forced litigants to retain a lawyer, but have required them to gain leave of court before filing a lawsuit. *See, e.g., Mayfield v. Collins*, 918 F.2d 560, 562 (5th Cir. 1991); *In re Martin-Trigona*, 737 F.2d 1254, 1258-59, 1264 (2d Cir. 1984); *Green v. Warden, U.S. Penitentiary*, 699 F.2d 364 (7th Cir.), *cert. denied*, 461 U.S. 960 (1983); *In re Green*, 669 F.2d 779, 787 (D.C. Cir. 1981). Unlike the decisions below, these rulings balance a litigant's right to self-representation against the integrity of the judicial system in a way that safeguards the legitimate interests of the individual and still protects the courts and other litigants from frivolous, time consuming claims.[5]

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[5] As we have noted (*supra* at 3), there is a line of Colorado authority barring *plaintiffs* from court unless they have an attorney. Only one reported federal case of which we are aware has required a *pro se* litigant to hire counsel. That case, involving an *indigent pro se* litigant, arose before Chief Judge Finesilver of the United States District Court for the District of Colorado. *People v. Carter*, 678 F. Supp. 1484, 1491-92 (D. Colo. 1986). *Cf. Mayfield v. Klevenhagen*, 941 F.2d 346 (5th

The court of appeals also erred by assuming that petitioner would be able to hire counsel to represent him in non-frivolous claims. The courts below did not even consider whether it was realistic to assume that the market for attorneys in Boulder County was such that petitioner could retain a lawyer at affordable rates, particularly in the type of cases that petitioner has brought which challenge entrenched authorities on sensitive issues, with little likelihood of attorney's fees or significant monetary recovery from which a contingent fee might be paid. *E.g.*, *Uberoi v. University of Colorado*, 686 P.2d 785. Moreover, since the injunction runs in perpetuity, the presumption that petitioner will be able to hire a lawyer forever, in all kinds of cases, would appear to be unfounded. This is critically important because, if petitioner could not retain counsel, he would be wholly without access to the courts, since the order here prevents him from filing *any* paper *pro se*, even one asking leave to amend or reconsider that order, generally or for only one case. Since preconditions on even the most vexatious litigant cannot be so burdensome as to deny meaningful access to the courts, *see*, *e.g.*, *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989), the court of appeals erred in affirming an injunction that made no findings as to whether petitioner could in fact hire an attorney under all of the circumstances covered by the order.

Two other aspects of the lower court's injunction put it even further outside the realm of constitutionally-permissible restrictions on *pro se* litigation. All of the cases in this area of which we are aware -- even the few that do require the retention of an attorney -- place restrictions only on *plaintiffs* or other *proponents*

Cir. 1991)(imposing monetary sanction after *pro se* litigant violated a "leave of court" injunction). Thereafter, respondent University of Colorado sought and obtained an injunction against petitioner before Judge Finesilver, greatly restricting his right to appear in federal district court without counsel. *University of Colorado v. Uberoi*, No. 88-F-1323 (D. Colo., Sept. 25, 1989), *aff'd*, Nos. 89-1117, 89-1304, 89-1337 (10th Cir. May 25, 1990)(unpublished opinion). That injunction against petitioner -- which we also believe sweeps far too broadly -- is, however, less restrictive than the injunction before this Court in one significant respect: it allows petitioner to appear *pro se* in a defensive posture. *Id.* slip op. at 14; *accord Carter*, 678 F. Supp. at 1492.

of civil claims. *E.g., Bd. of County Comm'rs v. Winslow*, 706 P.2d at 794; *see supra* note 5. In this case, however, petitioner "is enjoined from representing himself *in any manner* in the Twentieth Judicial District ..." (Pet. A3)(emphasis added).

Thus, if petitioner is charged with a crime in the Twentieth Judicial District, he will have to hire a lawyer, a result directly forbidden by this Court's decision in *Faretta*. Similarly, if petitioner is sued for divorce or by someone seeking a judgment resulting from an automobile accident, he has no choice but to accept a default judgment or hire an attorney. The lower court's injunction goes beyond requiring an attorney to help petitioner make a preliminary assessment of his case and appear with him in court because, by the plain terms of the injunction, petitioner's attorney must represent him throughout the entire course of the suit, no matter how costly that may be.[6]

Besides directly violating *Faretta* in the criminal context, the injunction here simply cannot be squared with the Fourteenth Amendment's requirement that no person be deprived of property without due process. Due process demands that, before a person is deprived of a property interest -- here, the cost of hiring an attorney, and the significant consequences if petitioner does not do so -- he be afforded some type of individualized assessment of the validity of his claim at a meaningful time and in a meaningful manner, *Goldberg v. Kelly*, 397 U.S. 254 (1970), something which the injunction clearly does not do. And, since due process requires a case-specific inquiry even where it might appear that a defendant's case is without merit, *see Peralta v. Heights Medical Center*, 485 U.S. 80 (1988), it surely does not allow the Colorado courts to prejudge the validity of petitioner's defenses, for all cases, in perpetuity, at such a substantial risk to his property. We do not suggest that a *pro se* defendant may never be required to obtain counsel, *but cf. Faretta*; however, we do believe that due

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[6] Thus, the court of appeals' decision potentially imposes a cost far greater than the cost of filing fees that this Court imposed on a *pro se* litigant who had filed dozens of frivolous actions, including 22 petitions for extraordinary writs. *See In re McDonald*, 489 U.S. 180 (1989)(per curiam); *see also In re Demos*, 111 S. Ct. 1569 (1991)(per curiam); *In re Sindram*, 111 S. Ct. 596 (1991)(per curiam).

process at least requires that petitioner be allowed to appear *pro se* and defend any action unless and until it appears that he has abused the court system in that action.

Finally, the injunction absolutely bars petitioner from appearing in the Small Claims Division of the County Court of the Twentieth Judicial District where, except in very limited circumstances not applicable here, "an individual *shall* represent himself." Colo. Rev. Stat. § 13-6-407(2)(emphasis added); *see also id.* § 13-6-401. Thus, if petitioner wishes to prosecute, *or even to defend*, a claim in the Small Claims Division of the Boulder County court, he may not do so. This is more than a little ironic in light of respondent's implicit contention that part of petitioner's difficulty in self-representation stems from the fact that he is not a lawyer and does not understand the rules of evidence, jurisdiction, and procedure. Nevertheless, at respondent's insistence, petitioner is absolutely barred from appearing in a court where "the rules of procedure and pleading and the technical rules of evidence do not apply ... ." *Id.*

B. THE APPROACHES OF THE COLORADO COURT OF APPEALS AND THOSE OF MOST OTHER COURTS DIFFER WIDELY, REQUIRING THE GUIDANCE OF THIS COURT.

1. As indicated above (*supra* at 7), the federal courts of appeals have generally required only that abusive *pro se* litigants obtain leave of court before filing lawsuits, but have not totally barred such litigants from appearing *pro se*. In some instances, to deter the practice of filing multiple actions concerning previously adjudicated claims, the courts also have required a *pro se* plaintiff to submit a list of previously litigated actions when seeking leave for further litigation. *See, e.g., Martin-Trigona*, 737 F.2d at 1258 n.3. *Cf. Ruderer v. United States*, 462 F.2d 897, 899 (8th Cir. 1972)(barring litigation on issue previously adjudicated many times). Similarly, this Court, while having required some *pro se* petitioners to pay filing fees on their requests for extraordinary writs, *see, e.g., In re McDonald*, 489 U.S. at 184, has not, to our knowledge, required them to hire counsel against their will.

Because the trial court here justified its requirement that petitioner hire an attorney on the ground that he is not indigent (Tr. at 78), it is worth noting that other courts faced with the question of litigation abuse generally have not focused on the financial resources of the *pro se* litigant in fashioning their injunctions. Most courts have assumed that the right of a litigant to proceed *pro se* is fundamental, and thus that any prior restraint on the exercise of that right may not force an attorney on an unwilling "client." Indeed, in some instances where a *pro se* litigant was required to seek leave of court (but not to retain counsel), it appears that the litigant was neither indigent nor a prisoner. *See, e.g., Martin-Trigona*, 737 F.2d at 1256-57.

By contrast, the District Court of Boulder County has issued an injunction that requires petitioner to hire a lawyer or forfeit his right of access to the courts, without even considering the less restrictive methods used by the lower federal courts. Moreover, *no* reported appellate decision of which we are aware prospectively bars even the most abusive litigant from *defending* a claim on a *pro se* basis, as does the injunction here. Thus, this Court should grant review to resolve the conflict evidenced by the approach of the Colorado Court Appeals and other courts (*see supra* note 5) and to establish the parameters for imposing limitations on *pro se* litigation abuse.

2. Any decision to sanction a perceived abuse of the court system by a *pro se* litigant should, of course, consider the magnitude of the burden caused by that litigant. Many of the leading cases involve truly extraordinary numbers of separate actions. *See, e.g., Martin-Trigona*, 737 F.2d at 1259 (about 250 cases in state and federal courts, plus numerous other suits served but not filed); *Green*, 669 F.2d at 781 (between 600 and 700 federal suits). *Cf. Ruderer*, 462 F.2d at 898 (21 suits regarding the same event). By comparison, the court of appeals affirmed the injunction here on the basis of only *eight* lawsuits. *Compare Kondrat v. Byron*, 587 F. Supp. 994, 998 (N.D. Ohio 1984)(denying injunction where *pro se* litigant had filed only four lawsuits concerning same occurrences), *aff'd without published opinion*, 762 F.2d 1008 (6th Cir. 1985). While we hesitate to recommend a numerical touchstone for the restriction of a valued constitutional right, the disparity of

the approach of the Colorado courts with that of most other courts warrants this Court's attention.

Similarly important is the degree of merit of a *pro se* litigant's claims. Many of the notable cases in this area concern litigants who file nothing but undeniably frivolous claims. *See, e.g., Urban v. United Nations*, 768 F.2d 1497, 1498-99 (D.C. Cir. 1985)(*pro se* litigant who, among other things, brought suit against "world Government of World Citizens" and sought to enjoin Presidential inauguration). *Cf. In re McDonald*, 489 U.S. at 184 (noting frivolity of petitioner's claims for extraordinary writs and that such relief is almost never granted); *In re Sindram*, 111 S.Ct. 596, 597 (1991)(per curiam).

This case presents a very different situation. Some of petitioner's litigation was clearly non-frivolous. *See Uberoi v. University of Colorado*, 686 P.2d 785 (rejecting claim that University was subject to Colorado Open Records Act, over two dissents)(no accusation of abusive litigation conduct); *Uberoi v. Malakh, et al.*, No. 84CV1907-5 (Boulder Dist. Ct., Colo.)(property encroachment claims settled for $1000; some motions denied, but no conduct sanctioned). *Cf. Uberoi v. University of Colorado*, 713 P.2d 894, 899-904 (Colo. 1986)(petitioner withstood University's Eleventh Amendment defense, claims of official immunity, and other defenses). In other cases, petitioner has presented at least partially meritorious claims, although the litigation was conducted in an unduly burdensome and sanctionable manner. *See Uberoi v. Ellefson, Kirby and State Farm Ins. Co.*, No. 85CV1686-5 (Boulder Dist. Ct., Colo. 1985)($700 jury verdict in favor of petitioner on one count; all other counts dismissed; petitioner ordered to pay $3098 in opponent's attorney's fees for vexatious conduct).

The requirement that petitioner obtain counsel seems particularly inappropriate where his conduct, while not laudable, has been accompanied by at least a good dose of serious, non-frivolous claims, at least one of which raised an important issue of public policy. *See Uberoi v. University of Colorado*, 686 P.2d 785 (Open Records Act case). Indeed, the Colorado Legislature responded almost immediately to this decision and amended the

Colorado Open Records Act to make clear that respondent was subject to it. 1985 Colo. Sess. Laws, H.B. 1226, § 1 (*codified at* Colo. Rev. Stat. § 24-72-202(1.5)); *see Civil Rights Comm'n v. University of Colorado*, 759 P.2d 726, 734 (Colo. 1988)(recognizing that *Uberoi* did not comport with legislative intent). Thus, to totally bar petitioner from appearing *pro se*, where pre-filing screening and case-specific sanctions would suffice, raises a serious constitutional problem. In any event, because such less restrictive alternatives have generally been employed by the lower federal courts, in situations where *pro se* litigants have filed nothing but frivolous claims, the vast difference in approach here suggests a need for review by this Court.

3. Public Citizen believes that this case is not about a *pro se* litigant determined to wreak havoc on the court system, although we do not doubt that petitioner has at times litigated without restraint and without regard for proper procedures, the interests of respondent and other litigants, and the needs of the court system. Rather, the Petition challenges the sweeping injunction of the Boulder County District Court which, in its zeal to rid itself of a contentious *pro se* litigant, has imposed a dangerous and unnecessary prior restraint on petitioner's constitutional right of access to the courts. That such an injunction has been affirmed by a state court of appeals, without any serious consideration of its constitutional ramifications, is all the more troubling. As this Court has noted, *pro se* litigants have brought momentous issues to the Court's attention, and continue to do so. *In re McDonald*, 489 U.S. at 184 (*citing Gideon v. Wainwright*, 372 U.S. 335 (1963)). In other contexts as well, *pro se* litigants continue both to raise serious questions and set important precedents. *See, e.g., Merrell v. Block*, 809 F.2d 639, 640 (9th Cir. 1987); *Naekel v. Dept. of Transportation*, 782 F.2d 975 (Fed. Cir. 1986). In doing so, they follow in the tradition of the Founders, who saw self-representation as a fundamental right of a free people, as a positive good and not merely a necessity for the indigent.

CONCLUSION

For the foregoing reasons, certiorari should be granted to review the overbroad injunction affirmed by the Colorado Court

of Appeals and to provide guidance on the important questions raised in the Petition.

Respectfully submitted,

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October 30, 1991

OPPOS

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(4)

No. 91-342

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1991

MAHINDER S. UBEROI — PETITIONER

VS.

THE BOARD OF REGENTS
OF THE UNIVERSITY OF COLORADO — RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF COLORADO

BRIEF FOR RESPONDENT IN OPPOSITION

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QUESTION PRESENTED

Whether enjoining of a *pro se* litigant from further *pro se* action as plaintiff or proponent of a claim is an appropriate and constitutional remedy, where plaintiff has repeatedly brought frivolous and groundless litigation, refused to obey orders of the court, misrepresented facts, sued judges and lawyers involved in his cases, demonstrated a likelihood of continued abuse, and has through his conduct rendered useless less severe remedies?

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OPINION BELOW

The opinion of the Court of Appeals of the State of Colorado is unpublished. The opinion is filed as case number 89 CA 0124, and is reprinted in the petition for writ of certiorari filed with this Court (Pet. App., pp. A.3-A.17).

JURISDICTION

The judgment of the Court of Appeals was entered on October 18, 1990. Rehearing was denied on November 23, 1990. On April 15, 1991, the Supreme Court of the State of Colorado denied a petition for writ of certiorari. The petition for a writ of certiorari was filed in this Court on August 21, 1991. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

STATEMENT OF THE CASE

The University of Colorado, a public institution of higher education, and its officers and employees have been continuously defending various actions brought by Petitioner Uberoi since 1983. State and federal courts have found that, for the most part, these actions are frivolous, groundless, and vexatious.

In August of 1988, the University filed complaints for injunctive relief in the United States District Court for the District of Colorado, and in the state district court for the County of Boulder. The University sought to enjoin the Petitioner from bringing further *pro se* lawsuits as the plaintiff or proponent of a claim. After two evidentiary hearings, one prior to issuance of a preliminary injunction and one prior to issuance of a permanent injunction, the United States District Court so enjoined Petitioner Uberoi. Please see *Regents of the University of Colorado v. Uberoi*, No. 88F1323 (D. Colo. Sept. 25, 1989) (unpublished decision). The District Court order was upheld by the United States Court of Appeals for the Tenth Circuit in consolidated actions number 89-1117, [illegible] For the convenience of the Court, the

District Court and the Tenth Circuit opinions are included in respondent's appendix. Petitioner sought a writ of certiorari from the United States Supreme Court. That petition was denied on January 22, 1991.

The state court held a hearing on the University's state complaint on December 16, 1988. Petitioner had been provided copies of the University's exhibits, first in June of 1988, and again in August of 1988. These exhibits also had been filed with the Court in advance of the hearing. The bulk of the December 16 hearing time was provided to the Petitioner for his testimony and presentation of exhibits. At the conclusion of the hearing, the court made oral findings of fact and issued an injunction from the bench.[1] The court later issued two abbreviated orders (Pet. App., pp. A.18-A.20). Petitioner's subsequent appeal to the Colorado Court of Appeals resulted in full affirmance of the trial court injunction. (Pet. App., pp. A.1-A.17). On April 15, 1991, the Colorado Supreme Court denied a petition for writ of certiorari. Petitioner now brings this petition to this Court.

The findings of the state and federal courts are similar. The U.S. District Court found that Petitioner continuously files duplicative causes of action which are frivolous, vexatious and without legal merit; that he consistently fails to follow the courts' orders; that he sues judges who have ruled against him; that he has established a pattern of seeking disqualification of judges who rule against him; that he continuously engages in courses of conduct that evidence a disregard for the courts' procedures and a lack of understanding of the rules of evidence and procedures; that he shows a total disregard for the limited resources of the courts and other litigants' right of access to the court; that he files actions and motions for vexatious and harassing purposes with total disregard for their legal merits; and that he factually misleads

[1]Petitioner did not include these findings or this order in his appendix. They are included in Respondent's appendix.

the courts. The court further found that other procedural mechanisms commonly used to discourage meritless claims, such as financial sanctions, have proven ineffective with Petitioner, and that Petitioner's course of conduct would continue unabated unless an injunction was issued.

Likewise, the Boulder County District Court found, in part, as follows:

> What is at stake here is the right of access to the judicial system by the public. That right of access is limited by an influx of frivolous and groundless actions or actions which are largely frivolous and groundless.
>
> . . .
>
> In this case Dr. Uberoi—in these cases Dr. Uberoi has filed an enormous number of motions in each case which unnecessarily expands (sic) the proceedings. There are constant motions for reconsideration and clarification, there are constant motions for disqualification of judges and attorneys who disagree with him, and then lawsuits against judges and attorneys who disagree with him when he is unsuccessful in getting them disqualified.
>
> . . .
>
> I am also finding that cases that he files derive from other cases and are almost without exception found to be frivolous or groundless or dismissable on some grounds. Even when cases are dismissed and the Court of Appeals and the Supreme Court affirm those dismissals, he continues to insist he is right and must constantly repeat the facts of the cases in which he has been wronged.
>
> . . .

> What is clear to me is that most of the cases have no merit whatsoever, and any of those that have some merit, there is a nugget of legitimacy which is lost forever in vexatious and groundless litigation.
>
> Dr. Uberoi seems to believe that the courts exist for his private use . . .
>
> The number of frivolous and groundless actions which he has filed indicate that Dr. Uberoi files actions without regard for the legal merits of this (sic) case. He files them on the basis of his own personal belief of the legal merits of the case. He has been unsuccessful in every regard except for (a) $700 plus interest judgment in the *Ellefson* matter, which was offset by a $3,400 attorneys' fees award for frivolous and groundless claims, and in a settlement for $500 against each of the defendants in the case involving the unfortunate El Malakhs who finally settled for a pittance in order to resolve the case.
>
> Everything else, volumes and volumes, files and files, cases upon cases contain the failure of Dr. Uberoi to convince any court that his claims have merit.

(R. Vol. VI, pp. 74-77).

The eight state and federal cases which form the bases of the state and federal courts' decisions are discussed in detail in the U.S. District Court order (Resp. App. pp. B.1-B.13). Within these underlying cases, additional state and federal judges have made specific findings of vexatious, frivolous and groundless action by Petitioner, and have in many cases awarded attorneys' fees against Petitioner. Such awards have not deterred the Petitioner from bringing new meritless lawsuits and continuing his pattern of abusive litigation tactics.

SUMMARY OF THE ARGUMENT

The courts' inherent power to enjoin frivolous and groundless litigation is well-established. The injunction of the Colorado court requires Petitioner to proceed through counsel when he is the plaintiff or proponent of a claim. This sanction is appropriate for this individual *pro se* litigant, who has been found to misrepresent factual matters to the court, and who does not assert a lack of funds to hire counsel.

REASONS FOR DENYING THE PETITION

I.
PETITIONER IS ENJOINED ONLY AS PLAINTIFF OR PROPONENT OF A CLAIM

The injunction issued by the state trial court does not prohibit Petitioner from defending himself in civil actions.

The relief sought by the University is stated in its complaint as follows:

> WHEREFORE, the University requests that this court issue a preliminary injunction prohibiting Mahinder S. Uberoi from any further *pro se* appearances as a plaintiff within the Twentieth Judicial District, in new actions as well as in any actions which are pending. The University further requests that this injunction be made permanent.

At the December 16, 1988 hearing, the trial court states as follows after making findings of fact based on the eight cases reviewed by the court:

> As a result of all those findings, the court will grant the injunction. The injunction relates to any matters currently pending or which Dr. Uberoi may choose to file in the future in the Twentieth Judicial District except for post-judgment collection procedures and appeals. (R. Vol. VI, p. 80).

At the time this order was issued, Petitioner was the plaintiff in all cases involving the Petitioner which were currently pending in the Twentieth Judicial District, except for the injunction proceeding. The trial court specifically granted Petitioner a thirty day time period in which to file any postjudgment motions in the injunction case (R. Vol. VI, p. 84). Please see Rule 59, Colorado Rules of Civil Procedure. Despite this opportunity, Petitioner filed no postjudgment motion with the court requesting clarification of the court's order as it affects his *pro se* defense in civil actions or reconsideration of any aspect of the order.

The Court of Appeals recognized that the order of injunction was first issued at the December 16 hearing:

> From the bench, at the end of the hearing, the trial court issued detailed findings of fact and an injunction that prohibited defendant from filing any documents *pro se* in pending cases in the Twentieth District, and from filing any new *pro se* cases in the district. A written order, later amended, followed.

(Pet. App., p. A.5)

Two written orders (Pet. App., pp. A.1-A.3) were issued by the trial court following the lengthy recitation of findings of fact and the order issued from the bench. It appears likely that these excerpted written orders were for the assistance of the clerk of the court and provided direction regarding what the clerk should accept for filing from Petitioner. The first written order, dated December 27, 1988, directs that Petitioner is prohibited "from filing paperwork of any nature in any current or future pending case in the Twentieth Judicial District, or filing any new case in the Twentieth Judicial District except matters relating to appeal or post-judgment proceedings, unless he has an attorney who enters his or her appearance in any such case." Again, if Petitioner found this written order at variance from the court's oral order of December 16, Petitioner had authority from the court, and

procedural direction from Rule 59, Colorado Rules of Civil Procedure, to file a motion seeking clarification or amendment. He did not do so.

The December 16 written order contained a typographical error. The order states: "The stay is effective January 16, 1989." In fact, the order should state that the stay is effective **until** January 16, 1989. The court issued an amended order on January 23, 1989, to correct this error, and to clarify that on January 16, 1989, the injunction, rather than the stay, became effective.

Petitioner first raised in the Colorado Court of Appeals his theory that the injunction prohibits him from *pro se* defense in civil actions. The Court of Appeals reviewed the transcript of the court's oral findings and order, as well as the two abbreviated written orders. The Court of Appeals interprets the injunction as prohibiting Petitioner only from representing himself as a plaintiff in the Twentieth Judicial District:

> Defendant, Mahinder S. Uberoi, appeals the injunction entered by the trial court prohibiting him from representing himself as a plaintiff in any matter other than post-judgment collection proceedings". (Pet. App., p. A.4).

The state court injunction does not prohibit *pro se* defense by Professor Uberoi.

II.
THE INJUNCTION DOES NOT PREVENT MEANINGFUL ACCESS TO THE COURTS FOR THIS PETITIONER

Petitioner claims an unidentified "federal right to represent himself in state courts." Petitioner cites no applicable law supporting this assertion. This Court has not recognized a specific right to self-representation in civil cases.

The right of access to the court, however, is well recognized in federal constitutional law. Although this right is not explicitly set forth in the constitution itself, it has been found in the due process clauses of the fifth and fourteenth amendments and in the right to redress grievances established by the first amendment. This right, however, is not without limitation; there is no constitutional right to prosecute an action that is frivolous. *In re McDonald*, 489 U.S. 180, 109 S. Ct. 993, 103 L. Ed. 2d 158 (1989); *Tripati v. Beaman*, 878 F. 2d 351 (10th Cir. 1989); *Hardwick v. Brinson*, 523 F.2d 798 (5th Cir. 1975).

The federal courts have long recognized the right to regulate the activities of abusive litigants through use of the inherent power of the court. Remedies are crafted to fit the unique circumstances of each individual case. *See Procup v. Strickland*, 792 F. 2d 1069 (11th Cir. 1986), and the cases discussed therein. The remedy crafted by the trial court is reviewed on appeal under an abuse of discretion standard. *Procup v. Strickland*, 792 F. 2d at 1074.

Federal courts have established a variety of remedies. The United States District Court for the District of Colorado enjoined a *pro se* litigant from initiating or prosecuting any civil claim in federal district court without the representation of counsel in *People of the State of Colorado v. Carter*, 678 F. Supp. 1484 (D. Colo. 1986). In *State of Colorado v. Fleming*, 726 F. Supp. 1216 (D. Colo. 1989), the court imposed a commonly used remedy of enjoining litigant Fleming from filing actions *pro se* without leave of the court, and without complying with a number of specified orders of the court, requiring that Mr. Fleming attach statements to any new complaint listing all lawsuits in which he was or is a party, listing all judgments against him, identifying any defendant who has been a party to a prior lawsuit involving Mr. Fleming, and setting forth other specified information.

Such injunctive remedies have been used by many courts. In *Tripati v. Beaman*, 878 F.2d. 351 (10th Cir. 1989), the court states at 352-53:

> Here, the district court required that plaintiff meet the following preconditions before filing future actions: (1) he must carry a stronger burden of proof that he is economically unable to pay filing fees; (2) he must demonstrate to the court that his action is commenced in good faith and not malicious or "without arguable merit"; (3) his pleadings must be certified as provided by Fed. R. Civ. P. 11; (4) he must include in every complaint filed a list of every previous action filed; and (5) he must send all pleadings to the defendants and provide the court with proof of service. These preconditions are clearly the type of carefully tailored restrictions contemplated by the various courts that have addressed the question of restraints on abusive litigants. *See In re Green, supra.* (litigant required to certify that claims advanced have never been raised before); *Green v. White*, 616 F.2d 1054, 1055 (8th Cir. 1980) (litigant required to list all causes previously filed on same, similar, or related actions); *Graham v. Riddle*, 554 F.2d 133, 134-35 (4th Cir. 1977) (prefiling review and denial of leave to file *in forma pauperis* except upon a showing of good cause). Thus, the restrictions imposed were appropriate.

More stringent standards have been imposed on other "career plaintiffs". In *In re McDonald, supra*, this Court prohibits Petitioner McDonald from filing any further petitions for extraordinary writs *in forma pauperis*. In so doing, the Court states at 489 U.S. 180, 184:

> Every paper filed with the clerk of this court, no matter how repetitious or frivolous, requires some portion of the institution's limited resources. A part of the court's responsibility is to see that these resources are allocated in a way that promotes the interests of justice. The continual processing of Petitioner's frivolous requests for extraordinary writs does not promote that end. Although we have not done so previously, lower courts have issued orders intended to curb serious abuses by persons proceeding *in forma pauperis*.

The court allows *in forma pauperis* filing of requests for relief other than extraordinary writs, so long as McDonald "does not similarly abuse that privilege". *McDonald*, 489 U.S. at 182. The Court thus suggests that further restriction may follow.

Other remedies tailored to fit the factual situation of the case are imposed in *Gelabert v. Lynaugh*, 894 F.2d 746 (5th Cir. 1990) (inmate must pay fine imposed in prior suit before proceeding with instant suit); and *In re Tyler*, 839 F.2d 1290 (8th Cir. 1988) (limiting the number of cases a pro se inmate may file *in forma pauperis*).

The Supreme Court of the State of Colorado has considered and approved the enjoining of *pro se* litigants appearing as plaintiffs or proponents of a claim. In this court's analysis, the requirement that abusive litigants proceed through counsel does not violate the federal constitutional guarantee of meaningful access to the court. Please see *Shotkin v. Kaplan*, 116 Colo. 295, 180 P.2d 1021 (1947); *People v. Spencer*, 524 P.2d 1084 (Colo. 1974); *Board of County Commissioners v. Barday*, 594 P.2d 1057 (Colo. 1979); *People v. Dunlap*, 623 P.2d 408 (Colo. 1981); *Board of County Commissioners v. Howard*, 640 P.2d 1128 (Colo. 1982); and Board of *County Commissioners v. Winslow*, 706 P.2d 792, (Colo. 1985).

III.
UNIQUE CIRCUMSTANCES JUSTIFY THIS INJUNCTION

The requirement that Petitioner proceed through counsel is particularly appropriate to the pattern of litigation established by Petitioner. Petitioner Uberoi misrepresents the facts to the Court. He has never suggested in this proceeding or related proceedings that he lacks the funds to hire counsel. The attorney who represents Petitioner can provide a factual investigation that the court is not equipped to perform. Under the constraints of Federal Rule of Civil Procedure 11, the attorney must not only satisfy himself that Petitioner's complaints

are legally sound; he also must investigate and determine that sufficient credible facts exist to bring Petitioner's representations before the court. In this sense, the court delegates the work of screening Petitioner Uberoi's complaints from the staff of the court, who cannot investigate the facts, to an attorney, who must do so.

Petitioner Uberoi's situation is different from that of the majority of *pro se* plaintiffs, who are often inmates in the custody of the state or federal government, or are proceeding *in forma pauperis*. Prisoners have an expanded constitutional right of access to the court for the purpose of challenging their convictions and the circumstances of their confinement. *Bounds v. Smith*, 430 U.S. 817, 97 S. Ct. 1491, 52 L.Ed. 2d. 72 (1977). Restrictions on access to the court for prisoners, therefore, are reviewed under a higher standard than restrictions imposed on non-prisoners. This requires careful distinguishing between remedies allowed by courts in inmate and nonprisoner cases.

Further, many cases involving abuse of the courts by *pro se* litigants concern litigants proceeding *in forma pauperis*. A special remedy, provided by 28 U.S.C. §1915 (d), allows the court to rid itself of frivolous *in forma pauperis* litigation without the need for enjoining of plaintiffs. Section 1915 (d) allows the court to specially review claims to determine whether the claim is frivolous. Please see *Neitzke v. Williams*, 490 U.S. 319, 109 S.Ct.1827, 104 L.Ed.2d 338 (1989), where the court states at 490 U.S. 327:

> Section 1915 (d) is designed largely to discourage the filing of, and waste of judicial and private resources upon, baseless lawsuits that paying litigants generally do not initiate because of the costs of bringing suits and because of the threat of sanctions for bringing vexatious suits under Federal Rule of Civil Procedure 11. To this end, the statute accords judges not only the authority to dismiss a claim based on an indisputably meritless legal theory, but also the unusual power to

pierce the veil of the complaint's factual allegations and dismiss those claims whose factual contentions are clearly baseless.

By paying his own filing fees, yet proceeding without counsel, Petitioner Uberoi evades the primary safeguards that protect our judicial system from frivolous litigation. Petitioner does not weigh the expense of attorneys' fees in determining whether to proceed with litigation. He is able to bring actions that would result in severe sanctions against licensed attorneys, with no consequence to Petitioner. By paying his own filing fees, he escapes the "piercing of the veil of the complaint's factual allegations" that Section 1915 provides. Severe financial sanctions have not deterred the Petitioner. His misrepresentation of facts make prefiling review by the court staff an extraordinary burden with no guarantee of successful exposure of groundless claims. Petitioner has never asserted that he cannot afford to hire counsel. The trial court's remedy of injunction is appropriate to these unique facts, and under these facts does not unconstitutionally limit this Petitioner's access to the court.

IV.
PETITIONER'S REMAINING ARGUMENTS ARE MERITLESS

Petitioner claims that the injunction violates his fourteenth amendment right to equal protection and due process, because the University was not a party to some of the cases presented to the trial court for review. Petitioner has raised this issue in the United States District Court, the United States Court of Appeals for the Tenth Circuit, the Boulder District Court, and the Colorado Court of Appeals. He has further attempted to obtain review of this issue by this Court in his petition for writ of certiorari arising from the Tenth Circuit injunction, and in the Colorado Supreme Court in his petition for writ of certiorari in the instant case. Many courts have clearly explained to Petitioner that the court is reviewing pleadings from these cases as evidence, and is not con-

ducting an additional appellate review of the merits of these cases. Despite this, Petitioner persists in asserting that the University has "no standing" to use these documents from other cases as exhibits, and that the trial court lacks subject matter jurisdiction to conduct an appellate review. The trial court did not conduct an appellate review.

Petitioner claims that his due process and equal protection rights were violated when the court issued an injunction from the bench after limiting Petitioner's case presentation to the two-hour time period scheduled by the court. Respondent's exhibits were filed with the court in advance of the hearing, along with an offer setting forth the evidentiary grounds for admission of each exhibit (R. Vol. III, pp. 432-438). The transcript of this hearing clearly establishes that Petitioner appeared unprepared to present his exhibits, and spent the bulk of the time allowed for hearing attempting to organize and present documents. The Colorado Court of Appeals found no procedural due process or equal protection violations in this action. This finding is well-founded and should be affirmed.

Petitioner claims that the injunction is "fatally defective" because it states no reason for its issuance. Despite Petitioner's recognition in paragraph four of the "Questions Presented" section of his petition that the injunction was issued from the bench, Petitioner fails to include the transcript of the court's findings of fact and conclusions of law in his appendix, along with the two brief written orders following the issuance of the injunction. The court's careful findings of fact as set forth at hearing render this claim frivolous (Resp. App., pp. A.1-A.7).

Petitioner claims that this case was brought in retaliation for his lobbying for changes in Colorado law, and that the University has committed fraud against the courts and various other entities. Petitioner presents no cogent factual or legal argument establishing a factual basis for these claims.

Petitioner's remaining claims are that the trial judge should have disqualified herself because of bias against him based on previous cases; that the trial court had no jurisdiction to dismiss his counterclaims; and that he should have been granted oral argument in the Colorado Court of Appeals. The Petitioner has failed to establish through the record that oral argument was denied him because of his *pro se* status, his race or his ethnic background. Petitioner presents no reasonable factual or legal argument on any of these three claims.

Petitioner surrendered any further complaint about the form or substance of the trial court order by failing to raise such matters in the trial court, where they could be considered and determined prior to issuance of the order, or on reconsideration of the order.

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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Dated: November 27, 1991

APPENDIX 1

Regents of the University of
Colorado, Plaintiff,
v.
Mahinder Uberoi, Defendant

88CV1545
PARTIAL TRANSCRIPT, HEARING DEC. 16, 1988

THE COURT:

I would like to state first for the record that the reason that I am accepting these exhibits and prohibiting Dr. Uberoi from continuing with his discussion of the various documents is that I believe that regardless of the amount of time that he is given in a court of law, he will use it. He was advised, as was University's counsel, some weeks ago when this matter was set, the matter would conclude at 5 o'clock.

Again, if he were an attorney he would know that that meant that he needed to organize what he wanted to say and what he wanted to offer to fit within the time limits. All attorneys all of the time are required to fit their comments, their testimony, and their exhibits into the time that is allotted by the Court. The Court sets a trial for four days, parties have to be finished in four days and they have to make certain selections and they have to make certain decisions about how they wish to proceed, how quickly they wish to talk, how much they wish to say, what witnesses they wish to offer. And it is not the case that Dr. Uberoi is the only person in the world who is being limited in his opportunity to respond.

In addition, his response is all basically on two or three points, which I think have been made adequately. The first is that the court system is either grossly inefficient or intentionally set on violating his rights and destroys documents and otherwise writes things inadequately or inaccurately so that he has to respond to them.

The second major point is that the University has generated litigation as well by filing motions, by filing things that are inaccurately styled or sent notices which were improperly done which he felt duty bound to bring to the Court's attention.

And the third is that at all times he has felt that he has been wronged in one way or another and that he has a right to bring those wrongs before the Court.

Addressing the last one. There is nothing in this injunction that will prohibit Dr. Uberoi from bringing lawsuits before the Court. The only thing that this injunction would do would be require him to have an attorney. The reason for that is that litigants, such as Dr. Uberoi, are not subject to disciplinary procedures that would ordinarily protect our system against abuse. And that is because attorneys have ethical obligations under Rule 11 of the Colorado Rules of Civil Procedure and also the Code of Professional Responsibility which prohibits them from bringing frivolous and groundless actions, which prohibits them from signing pleadings when they don't have good faith beliefs in the facts and the law and which otherwise require attorneys to act in a responsible fashion with regard to the judicial process. With an attorney Dr. Uberoi can file any actions which are legitimate actions so he would not be prohibited from access to the courts.

What this case is all about is whether under cases such as *Winslow* and *Carter* there is a serious abuse of judicial process goir g on. And I conclude, though I am going to lay this out in some detail, that "serious" is much too soft a word for what is occurring. What is occurring is inexcusable, is outrageous and is beyond the limits of the toleration of the judicial system.

What is at stake here is the right of access to the judicial system by the public. That right of access is limited by an influx of frivolous and groundless actions or actions which are largely frivolous and groundless. And that is because we have not enough clerks to respond to what is, as I understand,

a 25 percent increase in filing in the Twentieth Judicial District in the last year. We're constantly being limited in the number of people that we can hire, the clerks of the court are always busy trying to meet the needs of the public. So it is not just judges' resources; judicial resources include the sources of the entire system, clerks, division clerks who must work on these cases constantly rather than work on legitimate matters are being paid by the public.

In addition, this half day, the other half days, the weeks of research required to determine that the constant barrage of pleadings have no merit, prevents other persons from having access to the judicial system and waste judicial resources. That the University had to bring this action and that I had to hear it for half a day meant, at the very least, just as one example, that instead of being in my office and ruling on pending cases where people are legitimately waiting to hear what the Court's ruling is, that I am here and not there.

In this case Dr. Uberoi—in these cases, Dr. Uberoi has filed an enormous number of motions in each case which unnecessarily expands the proceedings. There are constant motions for reconsideration and clarification, there are constant motions for disqualifications of judges and attorneys who disagree with him, and then lawsuits against judges and attorneys who disagree with him when he is unsuccessful in getting them disqualified.

Kindly enough, Dr. Uberoi has attached to his motion for continuance and disqualification of me yet again in this case the notice that he sent to the Attorney General that he intends to file suit against me for $1.5 million alleging various things which are by and large that I have ruled against him in various cases. I'm not commenting on the merits of that case, it is simply another example of Dr. Uberoi—what I call process paranoia which is that he believes that we are all conspiring to deprive him of his rights when, in fact, we are trying to provide him with a forum for just claims.

Rather than go through each and every one of the lawsuits which have been presented by the University to show that Dr. Uberoi's claims are by and large frivolous and groundless or dismissed on various grounds, I am going to specifically incorporate into my findings the allegations of the University's Complaint Part 7, which I believe lists all of those and a summary of what has occurred in each of those cases.

I am also finding that cases that he files derive from other cases and are almost without exception found to be frivolous or groundless or dismissible on some grounds. Even when cases are dismissed and the Court of Appeals and the Supreme Court affirm those dismissals, he continues to insist that he is right and must constantly repeat the facts of the cases in which he has been wronged.

What is, in some ways, sad about this case is that on a few occasions Dr. Uberoi may have had claims which may have had some merits. For example, I suppose that someone ran into his car and he was given $700 for that; a University employee may have pushed him, he may have felt that he had some legitimate argument regarding the Open Records Act and apparently the legislature ultimately agreed with him; his neighbors may have been encroaching on his land. But rather than suing for negligence, suing for simple assault, bringing a case under the Open Records Act and keeping the matter to a claim for records under the Open Records Act, mediating with his neighbors or suing on a simple claim for removal of the shed, his actions are always expanded alarmingly beyond any rational procedure, and if he were an attorney, beyond any ethical manner of handling the case.

What is clear to me is that most of the cases have no merit whatsoever and any of those that have some merit, there is a nugget of legitimacy which is lost forever in vexatious and groundless litigation.

Dr. Uberoi seems to believe that the courts exist for his private use. The courts are a public institution. He shows no

regard for the limit of resources of the court and other litigants' right of access to the Court. He believes in his own position so completely and with such missionary vigor that there is no chance that anyone rational or irrational will ever be able to convince him that he is not being wronged and conspired against.

The number of frivolous and groundless actions which he has filed indicate that Dr. Uberoi files actions without regard for the legal merits of this case. He files them on the basis of his own personal belief about the legal merits of the case. He has been unsuccessful in every regard except for $700 plus interest judgment in the *Ellefson* matter, which was offset by a $3,400 attorneys' fees award for frivolous and groundless claims and in a settlement for $500 against each of the defendants in the case involving the unfortunate El Malakhes who finally settled for a pittance in order to resolve the case.

Everything else, volumes and volumes, files and files, cases upon cases contain the failure of Dr. Uberoi to convince any court that his claims have merit. I understand that many of the things that Dr. Uberoi has filed in these cases are in response to actions filed by the University, but the conclusion is inescapable: if he hadn't filed the actions to start with then he never would have anything to respond to.

In order to grant an injunction I must find a number of different things, one of which is the likelihood of success. I think that the statements that I have just made indicate that I believe that the University has a strong likelihood of success. At least two courts, if not more, have found that Dr. Uberoi's actions are in whole or in part frivolous and groundless, and the files themselves speak loudly as to the expansion of unnecessary cases which even if they did have some merit should have been focused, should have been done in an expeditious and clear manner.

I also find that there is no plain, speedy, adequate remedy of law, there is no remedy for the citizens of Boulder County

whose court systems are bogged down by the frivolous lawsuits of Dr. Uberoi. The University which must have standing to bring this case also has no plain, speedy, or accurate (sic) remedy of the law because they are currently involved in at least two lawsuits pending in the Twentieth Judicial District.

There is real immediate irreparable injury. There is a constant use of the State's lawyers to respond to claims and motions filed by Dr. Uberoi. In one case I awarded over $30,000 in costs and attorneys' fees which have been expended by the citizens of the State of Colorado because of Dr. Uberoi's actions. He, as an indication of his perseverance and the unlikelihood that he will ever get the message from any court, even in this action, he has counter-claimed for conspiracy, for constitutional violation, and for malfeasance in various ways. He has alleged that I have destroyed, myself, or encouraged the courts' staff to destroy, hundreds of pages of the record in 83CV625, an outrageous allegation which, of course, has no factual basis.

If I am required to balance the equities, which I am, I need to look at whether Dr. Uberoi will continue to have access to the courts even though the injunction is imposed. He cannot argue that this litigation is too expensive for him to afford an attorney. At the last tally he had something like 110- $115,000 in attorneys' fees assessed against him on the basis of frivolous and groundless actions. He obviously has the financial resources to continue with these lawsuits; he pays for transcripts, he posted a bond with a cashier's check, and he has never alleged that he is poor and needs to proceed *pro se* because he is unable to afford counsel.

I think that Ms. Fulton raises an interesting question. Either—there are several possibilities—Dr. Uberoi knows that he has no claims and insists on bringing them, in which case he needs an attorney to prohibit him from doing that, or he has no claims but he believes that he does in which case someone who is schooled in the law should advise him that he does not in order to protect him from additional attorney fees awards, or he has some good claims sometimes on a limited

basis but he is unable to present them in a manner which is recognized by the court and ends up with them—his having to pay enormous attorney fees. It doesn't really matter to me which of those three exist and I don't want to sort that out, but whichever of those three exist it is inescapable that Dr. Uberoi needs an attorney, not only to protect the system but also to protect his own interests.

With regard to the *status quo*. The *status quo* that I need to create for the duration of whatever it is that's going on in this case is to allow Dr. Uberoi access at the same time as I protect the system from serious abuse. It's my opinion that the courts have been held hostage by a man whose weapon is the manipulation of the desire of courts to maintain a just and democratic society through an open court system. Because he has that weapon, I believe that he must be disarmed of that weapon. By requiring him to have an attorney he will still have the right to bring legitimate claims in a proper manner and he will still sustain the benefits of the judicial process which we all enjoy.

As a result of all those findings, the Court will grant the injunction. The injunction relates to any matters currently pending or which Dr. Uberoi may choose to file in the future in the Twentieth Judicial District except for post judgment collection procedures and appeals.

APPENDIX 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 88-F-1323

BOARD OF REGENTS OF
THE UNIVERSITY OF COLORADO, Plaintiffs,

vs.

MAHINDER S. UBEROI, Defendant.

MEMORANDUM OPINION AND ORDER

Sherman G. Finesilver, Chief Judge

Plaintiff Board of Regents seeks to enjoin defendant Mahinder S. Uberoi from filing *pro se* lawsuits and requests a permanent injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure.

Defendant is a tenured professor at the University of Colorado at Boulder. We granted a preliminary injunction by Memorandum Opinion and Order dated March 24, 1989. Trial on the merits was held on August 21, 1989. Despite full notice and knowledge of the trial date, the defendant failed to appear and no witnesses appeared on his behalf. By this order we grant plaintiff's request for permanent injunction.

Jurisdiction in this matter arises from the court's inherent authority to control judicial actions taken by litigants who come before the court. *People of the State of Colorado v. Carter*, 678 F.Supp. 1484, 1485-86 (D. Colo. 1986). Further, plaintiff has standing to pursue this matter. *In re Martin-Trigona*, 737 F.2d 1254 (2nd Cir. 1984).

Although there is a constitutional right to access to the courts, there is "no constitutional right of access to the courts to prosecute an action that is frivolous or malicious." *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir. 1981). In order to protect the rights of other litigants to access to the courts, and to protect defendants from harassing, abusive, and meritless litigation, courts have authority to place reasonable restrictions on litigants who abuse the judicial process. *Phillips v. Carey*, 638 F.2d 207, 209 (10th Cir. 1981); *Theriault v. Silber*, 574 F.2d 197 (5th Cir. 1978); *People of the State of Colorado v. Carter*, 678 F.Supp. 1484, 1486 (D. Colo. 1986).

I.

Defendant has filed six actions in Colorado state courts and two in the United States District Court for the District of Colorado. As illustrated below, Professor Uberoi has acted frivolously or vexatiously in many matters involved in the lawsuits. The issues before us are whether Professor Uberoi should be enjoined from proceeding as a *pro se* plaintiff in this federal district, and whether that action is a reasonable restriction warranted by his abuse of the legal process. In so doing, we have considered all the testimony and evidence presented at the hearing for preliminary injunction and orders by the various courts in which Professor Uberoi has appeared. We have also considered evidence presented at the trial on permanent injunction.

Professor Uberoi's extensive legal dealings have exposed him to a smattering of knowledge of the legal process. Yet, based upon the evidence presented, including a review of the files of the two cases filed in this district, and proceedings in state courts, it is apparent that he either does not understand important basic concepts of jurisdiction, courtroom procedure, and the appellate process, or that he has chosen to ignore these concepts. While the court has an obligation to give *pro se* litigants wide latitude in their dealings with the court, the court cannot countenance repetitious, meritless and unduly expansive filings.

II.

We review previous case filings involving defendant:

> *Uberoi v. University of Colorado, et al.*, 82-LW-806, (U.S. Dist. Ct. Colo.), 1982; *aff'd*, 86-2186, slip op. (10th Cir. July 8, 1987); *cert. denied*, 87-1351 (U.S. April 4, 1984); *aff'd* 87-2219, slip op. (10th Cir. July 8, 1988); *cert. denied*, 88-1127 (U.S. February 21, 1989).

This was a suit alleging civil rights claims against the University of Colorado and sixty-four individual defendants. After five years of litigation the court dismissed Professor Uberoi's action for his failure to comply with the court's discovery orders.

Professor Uberoi filed appeals in the Tenth Circuit Court of Appeals based on Judge Lee West's dismissal of the action and award of attorney's fees against him. The dismissal was affirmed on appeal. *Uberoi v. University of Colorado*, 86-2186, slip op. (10th Cir. July 8, 1987). Petition for writ of certiorari was denied. *Uberoi v. University of Colorado*, 87-1351 (U.S., April 4, 1984). The award for attorneys' fees was also affirmed. *Uberoi v. University of Colorado*, 87-2219, slip op. (10th Cir. July 8, 1988). Certiorari was again denied. *Uberoi v. University of Colorado*, 88-1127 (U.S., February 21, 1989). To date, the attorneys' fees remain unpaid.

> *Uberoi v. Kirby and State Farm Insurance Co.*, 83S876-8 (Boulder County Court, Colorado, 1983); *aff'd*, 84CV0842-2 (Boulder District Court, Colorado, 1984); *cert. denied*, 85SC2 (Sup. Ct. Colo. 1985).

This suit arose from a 1979 traffic accident involving Professor Uberoi. The county court dismissed this case without prejudice to refiling, because Professor Uberoi failed to include the insured, Mr. Ellefson, in the lawsuit. Rather than refile the suit and include the proper party, Professor Uberoi took an appeal to the Boulder District Court (84CV0842-2). He

lost the appeal. Petition for writ of certiorari in the Colorado Supreme Court was denied.

> *Uberoi v. Ellefson, Kirby and State Farm Insurance Co.*, 85CV1686-5 (Boulder District Court, Colorado, 1985); *cert. denied*, 87SA145 (Sup. Ct. Colo. 1989).

Professor Uberoi instituted additional lawsuits stemming from the 1979 traffic accident. Professor Uberoi received a favorable judgment for $700.00. The favorable $700.00 judgment was used to offset the $3,098.00 award for attorneys' fees. The court found that Professor Uberoi acted frivolously and vexatiously and ordered him to pay the attorneys' fees. Professor Uberoi filed untimely motions and failed to follow the court's orders. His appeal to the Supreme Court of Colorado was transferred to the Colorado Court of Appeals, where it is pending.

> *Uberoi v. University of Colorado, et al.*, 82CV0953-3 (Boulder District Court, Colorado, 1982); *aff'd* 686 P.2d 785 (Colo. 1984).

This case stemmed from a public records request by Professor Uberoi. The state court ruled that the Public Records Act in effect in Colorado at that time did not apply to the University of Colorado. Professor Uberoi filed a motion for reconsideration. The Colorado Supreme Court affirmed the trial court's ruling.

> *Uberoi v. University of Colorado, et al.*, 83CV625-5 (Boulder District Court, Colorado, 1988); remanded, 84SA9 (Sup. Ct. Colo. 1988); on appeal, 88CA0714 (Colo. Ct. App. 1988).

This case arises out of an alleged detention and assault upon Professor Uberoi. Professor Uberoi brought suit against the University of Colorado, its police officers, attorneys and other employees. The court dismissed the case for failure to state a claim. He appealed to the Colorado Supreme Court

and upon remand the trial court entered summary judgment for all defendants. His appeal is pending in the Colorado Court of Appeals.

> *Uberoi v. University of Colorado, et al.*, 85CV2080-2 (Boulder District Court, Colorado, 1985); on appeal, 89SA228 (Sup. Ct. Colo. 1989).

This case stems from the denial of certain records to Professor Uberoi under the Open Records Act and an unrelated traffic stop by a University police officer. In a hearing on the Open Records Act, Judge Murray Richtel ruled that some of the requested records should be disclosed while others were protected. As a result of the ruling, Professor Uberoi sought disciplinary actions against Judge Richtel, discussed below.

Subsequent to Judge Richtel's ruling, another hearing on the Open Records Act was held before Judge Morris Sandstead. The May 2, 1989 ruling and order of Judge Sandstead provides further evidence of Professor Uberoi's persistent and ongoing abuse of judicial process. The order points out Professor Uberoi's clear lack of proof with respect to certain claims contained in his complaint. The order clearly states that Professor Uberoi failed to present any evidence, as to his interference with contract claim, that defendants had any knowledge of the traffic stop. Rule and Order, 85CV2080-2 (Boulder District Court, Colorado, May 2, 1989) (citation omitted). Judge Sandstead, recognizing the applicability of the injunction against Professor Uberoi issued by the Honorable Roxanne Bailin in *Board of Regents of the University of Colorado v. Uberoi*, 88CV1545-5 (Boulder District Court, Colorado, December 16, 1988), stated: "Pursuant to the terms of the injunction, the court has not considered, nor will it consider in the future, any new motions filed *pro se* by plaintiff after January 16, 1989, except as they might relate to post-judgment collection or an appeal." Despite this order, and another admonition subsequent to this order, Professor Uberoi filed several additional *pro se* pleadings.

Uberoi v. Richtel, 87-Z-961, (U.S. Dist. Ct. Dist. Colo. 1987); notice of appeal filed June 16, 1989.

As a result of Judge Murray Richtel's ruling and conduct in the case noted above, 85CV2080-2 (Boulder District Court), Professor Uberoi brought suit against Judge Richtel in federal court. The claim asserted, *inter alia*, that Judge Richtel misinterpreted a state statute, discriminated against Professor Uberoi and stayed judgment in order to prevent Professor Uberoi his right of appeal.

This action against Judge Richtel was dismissed. Order of dismissal, May 19, 1989. Professor Uberoi filed a notice of appeal on June 16, 1989, which is pending.

Uberoi v. Malakh, et al., 84CV1907-5 (Boulder District Court, Colorado, 1984).

This suit arises from a stop work order issued against Professor Uberoi when he began construction of a fence that appeared to exceed Boulder height limits. Defendants included the City, its employees and Professor Uberoi's neighbors.

This case is still pending, except that certain defendants have been dismissed pursuant to Professor Uberoi's acceptance of their offer of judgment.

Board of Regents of the University of Colorado v. Uberoi, 84CV1545 (Boulder District Court, Colorado, 1988); certiorari filed, 89SC244 (Colo. Sup. Ct. 1989); on appeal, 89CA0124 (Colo. Ct. App. 1989).

In this action a Colorado state district judge issued an injunction preventing Professor Uberoi from appearing *pro se* in all proceedings in the district court of Boulder County. The state court's findings of fact and conclusions are illuminating on issues involved in this litigation. As each court determines its own jurisdiction, the order is not binding on us on principles of collateral estoppel or res judicata. The status of his

appeals are unclear. Professor Uberoi filed a writ of certiorari in the Supreme Court of Colorado while an appeal is pending in the Colorado Court of Appeals.

III.

The instant case was filed on behalf of the Board of Regents of the University of Colorado. Professor Uberoi's conduct in this matter clearly illustrates why he should be prevented from further *pro se* representation. He has filed repetitive motions to disqualify the instant judge and the U.S. Magistrate. The motions for disqualification have been rejected by Tenth Circuit Court of Appeals. As we detailed, there are continuing failures to follow court rules, filing dates and accepted court procedures.

The defendant appeared before the court at the hearing on preliminary injunction on February 28, 1989. At the time the court set trial date for the three-week trial calendar commencing August 7, 1989 and the Pretrial Conference for June 19, 1989. The court granted plaintiff's motion for preliminary injunction. The court ordered the defendant to retain counsel within thirty days or face dismissal of his counterclaims. The defendant did not act. The counterclaims were dismissed.

On March 27, 1989, the case was referred to United States Magistrate Donald Abram for the pretrial and discovery matters. Professor Uberoi was again notified of the following dates: Pretrial Conference to be held on Monday, June 19, 1989 and instructions for submitting the pretrial order; discovery cutoff on June 15, 1989; trial scheduled for three week trial calendar commencing August 7, 1989.

On June 15, 1989, defendant filed a motion for continuance of the dates set for pretrial order and trial. In support of this motion, defendant stated: "Plaintiff has refused to cooperate in discovery. Defendant is filing motion to compel. After paper discovery, Defendant will depose several witnesses. The discovery has not proceeded to a point to permit the prepara-

tion of pretrial order for trial to jury on counterclaims nor trial to the court on claims, nor to set a date for trial."

Also on June 15, 1989, defendant filed a motion to disqualify Magistrate Donald Abram. Defendant asserted that the magistrate "willfully denied [defendant] due process and equal protection guaranteed by the Constitution." The magistrate established dates for completion of discovery and pretrial conferences, and denied a motion by the defendant.

Both of defendant's motions were denied by Order of the court on June 16, 1989.

The pretrial order was entered by Magistrate Abram on June 19, 1989. Plaintiff informed the magistrate it did not intend to call any witnesses. As reflected in the order, defendant stated he would call himself as an expert witness and that he intended to call over four dozen witnesses in person or introduce their depositions at trial.

On July 20, 1989, Professor Uberoi filed a motion to continue discovery cutoff. In support of his motion, Professor Uberoi stated: "Considering the present status of the case, Uberoi has listed over fifty witnesses and plans to present extensive exhibits and analysis relating to false claims and his defenses in other cases which will require six weeks of trial time which cannot be fitted into a three week trailing trial calendar. Further discovery should simplify issues, produce stipulations and reduce trial time." This court denied that motion by Order dated July 20, 1989.

On August 1, 1989, we directed the parties to submit trial materials on or before August 7, 1989. We also directed the parties to submit witness lists stating the nature of the testimony of each witness. Trial was unequivocally set for August 21, 1989 at 9:00 a.m.

On August 7, 1989, Professor Uberoi filed a motion for continuance. He stated: "Uberoi assumed that he would be

given reasonable notice of the specific trial date and the time allowed for trial so that the witnesses could be subpoenaed on appropriate dates. It would be unreasonable to subpoena witnesses on a continuing basis for weeks." Professor Uberoi stated in the motion he received the court's August 1, 1989 Minute Order directing parties to submit trial materials on August 4, 1989. Defendant requested "that deadlines for discovery be continued for at least six months and that the trial be set when the case is at issue."

On August 7, 1989, the court directed the parties to submit trial materials on or before August 10, 1989. The court stated **"NO FURTHER EXTENSIONS OF TIME WILL BE GRANTED."** The plaintiff complied with the order. Defendant did not comply, and failed to submit trial materials, witness names or exhibit lists.

On Friday, August 18, 1989, at 3:21 p.m. Professor Uberoi by written motion requested the court to "grant continuance of trial set for August 21, 1989, and that discovery be permitted for a year and a status report be submitted then and that trial be held after the case is at issue; and that the court provide such further and additional relief it deems just and proper."

On August 18, 1989, in the late afternoon, the motion for continuance of trial was denied. The parties were directed to appear for trial on Monday, August 21, 1989 at 9:00 a.m.

On Monday, August 21, 1989, the court called the case for trial. Plaintiff's counsel appeared, but defendant did not. No witnesses appeared on behalf of defendant. The case proceeded to trial. Illustrative of the irresponsible course of conduct by Professor Uberoi is the fact that on *August* 18, 1989, defendant filed a motion for this court to order the United States Attorney for Colorado to seek indictment against plaintiff's attorneys in a completely separate court case that has already been tried in this federal district, affirmed by the Tenth Circuit Court of Appeals and certiorari denied by the Supreme

Court. The outstanding motion to seek indictments against plaintiff's attorneys was denied. The case proceeded to trial in the absence of Professor Uberoi.

IV.

It is readily apparent that Professor Uberoi continuously disregards and refuses to follow standard methods of appeal. Instead, he brings duplicate lawsuits. Professor Uberoi exhibits a pattern of seeking disqualification of judges who rule against him. He has sought disqualification of at least eight judicial officers: State District and County Judges Bailin, Enwall, Richtel, and Sandstead, Federal District Judges Matsch, West, and Finesilver, and United States Magistrate Abram. Most recently, on October 28, 1988 he sought disqualification of the state judge presiding in Boulder District Court who issued an injunction against Professor Uberoi's acting in a *pro se* capacity. Defendant renewed the motion on December 13, 1988. Professor Uberoi testified at the hearing on preliminary injunction that he does not always seek disqualification of judges who rule against him, and cited as an example that he did not seek to disqualify Judge West in *Uberoi v. University of Colorado, et al.*, 82-LW-806 (D. Colo. 1986). However, he testified before this court that he regretted failing to do so, and that he believed his problems would have been solved by disqualifying Judge West. Our review of the case file reveals that Professor Uberoi did in fact move to disqualify Judge West and to vacate all his orders on December 11, 1985. That motion was denied on December 16, 1985.

Professor Uberoi consistently disregards the procedures of courts in which he appears. His pleadings establish his lack of understanding of the rules of evidence and court procedure. His belligerent pursuit of meritless claims illustrates his complete disregard for the limited resources of the federal and state courts and the legitimate need of other persons to have access to courts. A licensed attorney, conducting himself in the same manner as this defendant, would be subject to the severest sanctions under Rules 11 and 16 of the Federal Rules

of Civil Procedure, 28 U.S.C. § 1927, and Code of Professional Responsibility. The fact that Professor Uberoi pursues his meritless claims in a *pro se* capacity does not excuse him from compliance with the rules of this court.

Professor Uberoi files actions and motions for vexatious and harassing purposes with total disregard for legal merits. His redundant pursuit of meritless claims tax the time, energy and resources of the participants involved, and the courts in which he files suits.

Professor Uberoi has misled courts. For example, in *Uberoi v. University of Colorado, et al.*, 82-LW-806 (D. Colo. 1986), Professor Uberoi represented to the trial and appellate courts that discovery in the case had hardly begun, when forty-seven depositions were taken or scheduled to have been taken. He maintained that the discovery cutoff of April 15, 1986 had not been set until February 20, 1986, when it in fact had been set at a status conference on November 26, 1985, and included in an order of December 4, 1985. Finally, he denied that trial in the case had been set for June 2, 1986, when that date had been set on February 19, 1986.

V.

For the reasons stated, it is necessary to permanently enjoin Professor Uberoi from filing or appearing in any civil action in this district in which he is the proponent of a claim, without representation by a licensed attorney. We find that other procedural mechanisms to discourage meritless claims have proven unsuccessful with Professor Uberoi. Financial sanctions can be imposed against *pro se* litigants under Rules 11 and 16 and 28 U.S.C. § 1927. However, repeated sanctions imposed against Professor Uberoi have proven to be ineffective.

We have carefully considered imposition of sanctions under Rules 11 and 16 of the Federal Rules of Civil Procedure and in our opinion this approach would be unavailing. Sanctions imposed against Professor Uberoi in *Uberoi v. University of*

Colorado, 82-LW-806 (D. Colo. 1986), described above, have never been satisfied.

We expressly find that Professor Uberoi has flagrantly and repeatedly abused judicial process by filing meritless lawsuits and motions. It appears that this course of conduct will continue unabated unless preventive measures are imposed. To ensure the integrity of the judicial process, the court must impose some limitations on Professor Uberoi's ability to file unwarranted lawsuits. Our injunction does not deny Professor Uberoi's access to the court. It appears that Professor Uberoi has the means to obtain representation for meritorious claims.

ORDER

It is hereby ORDERED that defendant Mahinder S. Uberoi is permanently enjoined from proceeding as a proponent of any civil claim in the United States District Court for the District of Colorado without the representation of an attorney licensed to practice in the State of Colorado and admitted to practice in this court. It is further ordered that all cases pending in the United States District Court for the District of Colorado in which Professor Uberoi is the proponent of a claim, and in which he does not proceed reasonably to employ counsel to represent him, shall be subject to dismissal. This order does not apply to litigation currently pending before Judge Weinsheink, *Uberoi v. Richtel*, 87-Z-961. It is further ORDERED that:

The Clerk of the Court is DIRECTED not to accept any pleadings initiating a civil action or any case filings by Professor Uberoi unless he is represented by an attorney licensed to practice in the State of Colorado and by the United States District Court for the District of Colorado.

This order applies to any post-trial motions that defendant may file in this matter. Any post-trial motions relating to this case or other case filings of any nature must be filed

through a licensed attorney admitted to practice before this court. The court denies any request for a stay of execution of this order.

This order constitutes findings of fact and conclusions of law.

Done this 25th day of September, 1989 at Denver, Colorado. By the Court:

Sherman G. Finesilver, Chief Judge
United States District Court

APPENDIX 3

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

THE BOARD OF REGENTS OF THE UNIVERSITY OF COLORADO, Plaintiff-Appellee,

vs.

MAHINDER S. UBEROI, Defendant-Appellant.

Nos. 89-1117, 89-1304, 89-1337 (D.C. No. 88-F-1323) (D. Colorado)

ORDER AND JUDGEMENT*

Before MCKAY, MOORE, and BRORBY, Circuit Judges.

Defendant-appellant Mahinder S. Uberoi appeals a district court order permanently enjoining him from filing *pro se* lawsuits in the United States District Court for the District of Colorado.

I.

Mahinder S. Uberoi is a tenured professor at the University of Colorado at Boulder who has filed six actions in Colorado state courts and two in the United States District Court for the District of Colorado. Plaintiff-appellee Board of

*This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

Regents of the University of Colorado (the University) initiated this action to enjoin Professor Uberoi from filing *pro se* lawsuits. Professor Uberoi filed a number of counterclaims against the University.

On March 24, 1989, the district court entered a preliminary injunction prohibiting Professor Uberoi from filing or appearing in any civil action in the District Court of Colorado in which he is the proponent of a claim without representation by a licensed attorney. In its order, the court required that Professor Uberoi proceed through counsel on his counterclaims. Because Professor Uberoi did not meet the court's condition that counsel be retained within thirty days, his counterclaims were dismissed on June 16, 1989.

A hearing was held on August 21, 1989, on the merits of the University's motion for permanent injunction. Despite full notice and knowledge of the hearing date, Professor Uberoi failed to appear, and no witnesses appeared on his behalf. On September 25, 1989, the district court granted a permanent injunction barring Professor Uberoi from filing lawsuits *pro se*. The district court reviewed the previous case filings involving Professor Uberoi and concluded that "[t]o ensure the integrity of the judicial process, the court must impose some limitations on Professor Uberoi's ability to file unwarranted lawsuits." The court explained how Professor Uberoi disregards the procedures of courts in which he appears by filing actions and motions for vexatious and harassing purposes with total disregard for legal merits. The district court noted how Professor Uberoi has a pattern of seeking disqualification of judicial officers who rule against him. The district court cited several instances where Professor Uberoi misled the court or missed deadlines. Finally, the court observed how Professor Uberoi continuously disregards and refuses to follow standard methods of appeal, instead filing duplicative lawsuits or commencing suits against the judges who have ruled against him. We agree with the district court's conclusions and affirm the order enjoining Professor Uberoi from proceeding *pro se* as a proponent of any civil claim.

II.

Professor Uberoi challenges the district court's jurisdiction because the University's complaint was based in part on allegations of misconduct in state courts. However, the district court merely accepted and reviewed pleadings from state court actions and other federal suits as evidence on the issue of Professor Uberoi's competency in representing himself in legal proceedings.

A district court has power under 28 U.S.C. § 1651(a) to enjoin litigants who abuse the court system by harassing their opponents. *Tripati v. Beaman*, 878 F.2d 351, 352 (10th Cir. 1989).

In *Cotner v. Hopkins*, 795 F.2d 900, 902-03 (10th Cir. 1986), this court affirmed clearly tailored preconditions imposed upon a vexatious litigant. "Even onerous conditions" may be imposed so long as they are designed to assist the district court in curbing the particular abusive behavior. However, they cannot be so burdensome as to deny a litigant meaningful access to the courts. *Tripati*, 878 F.2d at 352.

In this case, the district court enjoined Professor Uberoi from proceeding without the representation of an attorney. This restriction was carefully tailored to abate Professor Uberoi's repeated *pro se* filing of unwarranted lawsuits and motions. Recognizing that repeated sanctions imposed against Professor Uberoi have never proven to be effective, the district court concluded that preventative measures were necessary due to his flagrant and repeated abuse of the judicial process. While litigiousness alone will not support an injunction restricting filing activities, injunctions are proper where the litigant's abusive and lengthy history is properly set forth. *Id.* at 353.

Furthermore, this restriction is different from the requirement imposed in *Tripati v. Beaman*, where this court remanded part of the order imposing restrictions on a plaintiff's future filings because there were no guidelines as to what plaintiff

must do to obtain the court's permission to file an action. 878 F.2d at 354. Here, the district court clearly stated that Professor Uberoi may proceed with his claims if he is represented by an attorney licensed to practice in the State of Colorado and admitted to practice in the United States District Court for the District of Colorado.

The right of access to the courts is neither absolute nor unconditional, and there is no constitutional right of access to the courts to prosecute an action that is frivolous. *Tripati*, 878 F.2d at 351 (citing *In re Green*, 669 F.2d 779, 785 (D.C. Cir. 1981), *Phillips v. Carey*, 638 F.2d 207, 208 (10th Cir.), *cert. denied*, 450 U.S. 985 (1981)). "No one, rich or poor, is entitled to abuse the judicial process." *Tripati*, 878 F.2d at 353. In this case, the condition that Professor Uberoi must be represented by counsel does not deny his access to the courts because he has the means to obtain representation for meritorious claims.

For the same reasons, we affirm the district court's dismissal of Professor Uberoi's counterclaims after he failed to retain an attorney as ordered by the court on March 24, 1989. The district court was exercising its authority to protect the University from harassing litigation and to protect its own calendar from further frivolous and time-consuming claims.

We also reject Professor Uberoi's contention that the University is without standing to bring this action. The University has met its burden of showing "a history of litigation entailing 'vexation, harassment and needless expense to [other parties]' and 'an unnecessary burden on the courts and their supporting personnel.' " *In re Martin-Trigona*, 737 F.2d 1254 (2d Cir. 1984) (quoting *In re Hartford Textile Corp.*, 681 F.2d 895, 897 (2d Cir. 1982), *cert. denied*, 459 U.S. 1206 (1983)).

III.

We reject Professor Uberoi's contention that under 28 U.S.C. § 455, Chief Judge Finesilver is disqualified from hearing the University's injunctive request. The factual ground for his

request is that the University presented Judge Finesilver with an honorary doctorate during the pendency of this case.[1] The district court rejected Professor Uberoi's motion for recusal, noting the offer and acceptance of the honorary degree occurred before the University's injunctive action was filed. In addition, the court concluded Professor Uberoi's status as a faculty member negated any contentions that the court would be biased in favor of other University officials any more so than in favor of Dr. Uberoi as a University professor.

Because the decision to recuse is within the sound discretion of the district judge, we review denial of recusal for abuse of that discretion. *Hinman v. Rogers*, 831 F.2d 937, 938 (10th Cir. 1987). Under 28 U.S.C. § 455, the test is whether a reasonable person, knowing all the relevant facts, would harbor doubts about the judge's impartiality. *Id.* at 939. Without more, merely having attended or graduated from a school, which is a party, is not a reasonable basis for questioning a judge's impartiality. *Brody v. President & Fellows of Harvard College*, 664 F.2d 10, 11 (1st Cir. 1981), *cert. denied*, 455 U.S. 1027 (1982); *see also Easley v. Michigan Board of Regents*, 853 F.2d 1351 (6th Cir. 1988). These courts reasoned that "[a]ll judges come to the bench with a background of experiences, associations, and viewpoints. This background alone is seldom sufficient in itself to provide a reasonable basis for appeal." *Easley*, 853 F.2d at 1356. Similarly, the mere association of a judge with a party without indication the judge stands to obtain financial or other gain from a particular outcome may be

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[1]Professor Uberoi also claims Judge Finesilver is disqualified in this matter because fellow District Judge Carrigan was a defendant in one of the actions on which the University's injunctive complaint is based. However, this request for injunctive relief is a separate matter which does not require relitigation of that case. Therefore, Judge Finesilver's impartiality is not at issue, and disqualification on this ground is not required.

insufficient to mandate disqualification. *Brody*, 664 F.2d at 11. When a judge is awarded an honorary degree from a school which is a party in current proceedings, there may be a stronger case for recusal. However, in this case, the offer and acceptance of the honorary degree occurred before the university filed this injunctive action. Therefore, the honorary degree was not an interest which could be substantially affected by the outcome of the proceeding.

This case differs from *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988), where the Supreme Court affirmed the disqualification of a trial judge who was a trustee of a university which had a substantial financial interest in the subject matter before the trial judge. In this case, Judge Finesilver is not serving as a trustee and has no financial interest at stake in these proceedings.

IV.

We conclude that many of the issues appealed by Professor Uberoi are not properly before this court. Professor Uberoi erroneously claims the district court reviewed and relitigated several of his previous case filings in the permanent injunction trial. Thus, Professor Uberoi seeks review of several issues which were raised in 82-LW-806 and the appeals filed from that action. He also raises the issue of the propriety of the transfer of 82-LW-806 to Judge West. Judge West dismissed 82-LW-806 for Professor Uberoi's failure to comply with the court's discovery orders. This court affirms both the dismissal and award of attorneys fees against Professor Uberoi. *Uberoi v. University of Colorado*, No. 86-2186, slip. op. (10th Cir. July 8, 1987) (dismissal); *Uberoi v. University of Colorado*, No. 87-2219, slip. op. (10th Cir. July 8, 1988) (attorneys fees). Issues arising out of 82-LW-806 were decided in those actions and are not properly before this court. All other matters pending in this case not specifically resolved are now moot.

The order of the district court is AFFIRMED. The mandate shall issue forthwith.

Entered for the Court

John P. Moore
Circuit Judge